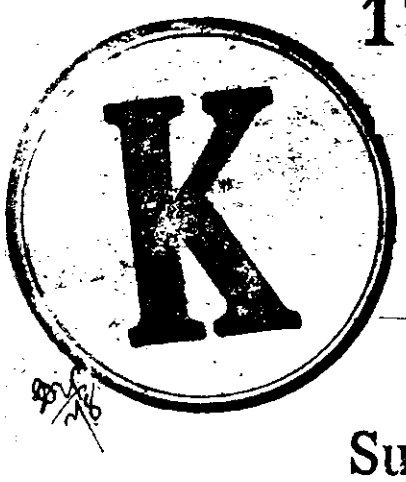


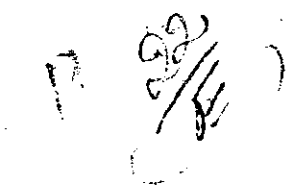
1951. File No. a Essential supplies 2

Legal Department.

G BRANCH

Subject:—

Opinions on the Essential Supplies (Temporary powers) Act, 1946.



tial Supplies /

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S.I./17.7.56.

## Legal Department.

The Bombay Hay Trade Licensing Order, 1944 has been issued under the provisions of the Defence of India Rules and has been continued in force by section 6 of the Bombay Essential Commodities and Cattle (Control) Act, 1946. Hay as a cattle feed is an essential commodity under the Bombay Essential Commodities and Cattle (Control) Act (vide item (2) in Schedule I appended to that Act). Under the recent amendment of Essential Supplies (Temporary Powers) Act by Act LII of 1950 cattle fodder has been included as an essential commodity under that Act. In view of this amendment in the Central Act it would no longer be possible for the State Government to regulate or control cattle fodder under the Bombay Act. The regulation of hay will have to be made under the Central Act by obtaining the delegation of power thereunder (pl. see Addl. Secy's No. G-366, dt. 24-10-50, copy enclosed)

Sd/-/ 12.12

Additional Secretary to Government.

U.R. to C.S.O., No.G - 430, dated the 12th December, 1950.

S.L./13.7.56. 4c.

Legal Department.

Bakeries are 'manufacturing establishments' as defined in clause 2(4) (b) (iv ) of the Bombay Rationing Order, 1943 and the manufacture and distribution of bread which is a rationed article is regulated under the said order. Under clause 3 of the said Order an authorisation is given to the bakers authorising them to supply bread against bread coupons. The authorized bakers obtain wheat flour on the bread coupons from the Permit Section of the Controller of Rationing's office. The restriction on the price and size of the bread is imposed under the Bombay Bread (Control and Maximum Prices) Order, 1944. It will be therefore seen that the Bombay Rationing Order, 1943 and the Bombay Bread (Control and Maximum Prices) Order, 1944 are the only two orders under which the bakeries are controlled and both these orders do not contain any provision for imposing fine.

The Controller of Rationing's office is however imposing fine on the bakeries in an indirect way. When a departmental enquiry is held against a baker and it is found that the baker is guilty of contravention of any provision of any law, then a letter is sent to the proprietor informing him that it has been decided to move Govt. to cancel the authorization issued to the Bakery and if the proprietor so desires, he may deposit a specified amount in lieu of such cancellation which deposit would be accepted if the

proprietor agrees to the forfeiture of it in full etc. (a cyclostyled copy of such a letter is put up at slip D ) And after such a deposit is received, it is forfeited either in part or full which perhaps is considered as fine imposed on bakeries. Similar action is taken for levying every fine in respect of failure to submit weekly returns in time. (Pl. see copy at slip I) The bakeries agree to such imposition of fine because by cancellation of their authorization they have to closse the bakeries and this effects their very means of livelihood.

SRP/15.2. Through S.A.S.

Addl. Secy. Sd/- /16.2.

In similar cases the question of forfeiture of deposits has been considered in the past and my impression is that we have doubted the legibility of such forfeitures.

An order under the Essential Supplies (Temporary Powers) Act. 1946 cannot provide for imposition of a fine or penalty nor can the expedient adopted in the case of likeness be justified on any legal ground.

Before expressing expressing any definite view should like to see R.L.A's opinion regarding forfeiture deposits.

Sd/- /16.2.

S.I./13.7.56. 4c.

Office of the R.L.A.

As already stated in R.L.A's opinion No. G-38 dated the 19th January 1951 it will not be possible to make any statutory order for the imposition of a fine (Queen Vs. Sankey 3 Q.B.D.379). However to achieve the object in view the expedient adopted in the case of bakeries may be tried if considered suitable in this case. It appears that when a bakery is found to have contravened the provisions of any law a letter is sent to him intimating to him that unless he deposited a specified amount and agreed to the forfeiture of the same in part or in whole his authorization would be cancelled. This course seems to be free from any legal objection.

Id/- /26/4.

Remembrancer of Legal Affairs.

U.R. to S.T.C., No. G-165, dated the 26th April, '51.

S.I./14.7.56. 4c.

The judgment of the Resident Magistrate on the point of forfeiture is not correct, Sub-section (1) of section 7 of the Essential Supplies (Temporary Powers) Act, 1946 as amended by India Act LII of 1950 provides that if any person contravenes any order under section 3 relating to cotton textiles, he shall be punishable with imprisonment for a term which may extend to 3 years and shall also be liable to fine and any property in respect of which the order has been contravened or such part thereof as the Court may deem fit shall be forfeited to the Government. Sub-section 2 of section 2 of the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of Penalties) Act, 1947 provides that any court trying a contravention of an Order made under section 3 of the Essential Supplies (Temporary Powers) Act, may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to the Government. It has been held in R.L.A's opinion dated the 3rd May 1949 forwarded to Civil Supplies Department under R.L.A's No. G-413, dated 30th May 1949 that the provisions of the India Act LII of 1950 override the provisions of the enhancement of Penalties Act. In this case, therefore, the forfeiture of part or whole of the property is obligatory. As, however, the Court has the discretion to confiscate only a part of the goods in regard to which the contravention has occured, it is possible that the High Court, if it entertains the revision petition may direct the forfeiture only of a small part of the cloth involved in the contravention, on the ground that a heavy fine had already been imposed. In the circumstances it is not worth-while to file revision petition first to the Sessions Court (which is bound to be rejected on the ground of limitation) and then to the High Court, and the Secretary, Civil supplies Department and Secretary, Home Department have agreed with this view. The best course would,

therefore be to return the goods to the accused and then to take them over by taking recourse to clause 30 of the Cotton Textiles (Control) Order, 1948.

Id/-

Additional Secretary to Government.

U.R. to S.T.C., No. G-161. dated the 23rd April 1951.

S.I./14.7.56. 4c.

The Following two questions are raised by the Civil Supplies Department for the consideration of this Department in connection with the proposal of the Central Government to withdraw the delegation to the State Governments under section 4 of the Essential Supplies (Temporary Powers) Act in respect of foodstuffs in general except oil, oilseeds, pulses, gram, sugar, gur and ghee and to delegate powers to make orders in respect of foodgrains only such as wheat, rice, paddy, juwar, bajri, maize, barley and the minor millets:-

i) Whether orders in regard to control of milk and milk products can be continued under the Bombay Essential Commodities and Cattle (Control) Act, instead of under the Essential Supplies (Temporary Powers) Act and whether such orders would be legally valid in view of the fact that milk is a foodstuff to which the Essential Supplies (Temporary Powers) Act applies;

ii) whether the entertainment Restriction Order and the two course meals Orders issued by this Government are intra vires the power of this Government which is derived from the delegated notification under which no power is delegated in respect of edible oil, oilseeds, gram, pulses, sugar and gur.

Question No.1 :- The question whether an order in respect of milk could be made under the Essential Supplies (Temporary Powers) Act, 1946 was considered by the Presidency Magistrate, Bombay, in case No.614 P of 1949 and the Magistrate held that the order regarding milk not being issued under the Bombay Essential Commodities and Cattle Control Act was invalid. The R.L.A. however, in his opinion No. G-577 dated the 9th September 1949 did not agree with the Magistrate's view and advised that the order in question being defective in certain respects should be re-issued both under the Central as well as the Provincial Acts. The High Court had also to decide in appeal the question

whether the order in respect of milk could be made under the Essential Supplies (Temporary Powers) Act, 1946 in a case where the order in question was actually made under the Central Act. The High Court, however, did not decidefinally the question but simply observed as follows:-

"The Learned Magistrate was of the Opinion that as in the Bombay Essential Commodities and Cattle (Control) Act, 1946 milk is separately specified as being an essential commodity the word "foodstuffs" used in the Essential Supplies (Temporary Powers) Act cannot be held to include milk. The Bombay Act came into force on the 30th September 1946 i.e. after the Central Act had been passed. We are unable to understand how the enactment can be construed by reference to a latter enactment passed by a different legislature. At most it might be argued that the Bombay Legislature specified milk separately in its Act because it entertained some doubt in the matter. But it would not show that the Central Legislature intended to exclude milk from the purview of the Act passed by it."

After this decision of the High Court, The R.L.A. in his opinion No. G-384 dated the 8th November 1950 advised the Milk Commissioner as follows:-

"In view of the judgment of the High Court in which the Bombay Act has not been held to be void in respect of item milk it is necessary to refer to both the Bombay and Central Acts in the two orders proposed to be made" which orders were in respect of milk and milk products.

In pursuance of this advice, the Civil Supplies Department has made the following two orders:-

(1) The Bombay Milk and Milk Products (Control on Preparations) Order, 1951, and

(2) The Bombay Milk (Regulation of Use and Sale) Order, 1951, both under the Central and Provincial Acts

There is no authoritative decision from the High Court whether an order in respect of milk

should be made under the Essential Supplies (Temporary Powers) Act and not under the Bombay Essential Commodities and Cattle (Control) Act, 1946 and vice versa.

The question whether the Central Act or the Provincial Act in respect of milk prevails will have to be determined with reference to the provisions of section 107 of the Government of India Act, 1935, which was the Act in force when both the Central and Provincial Acts were passed. A similar question regarding the entry "Cotton Seed" which was included in the year 1949 in the Central Act was considered in R.L.A's opinion No.G-659 dated the 18th November 1949 and it was held after having taken into consideration the provisions of section 107(2) of the Government of India Act that the Bombay Act is not rendered void on account of any repugnancy between that Act and the Central Act, namely, the Essential Supplies (Temporary Powers) Act, 1946. The reasoning given in the opinion would apply to the case under consideration that is regarding milk, as will be seen from the facts stated in the next para.

Certain orders regarding milk were issued under the Defence of India Rules 1939. Those Rules were due to expire on the 30th Spetember 1946. In order to enable the Central Legislature to continue to exercise the powers with respect to trade and commerce (whether or not within the Province) and the production supply and distribution of cotton, foodstuff etc. for temporary period, Parliament passed an Act called the India (Central Government and Legislature) Act, 1946. (9 and 10 Geo. 6 Chap. 39). By sub-section (4) of section 2 of the said Act it was provided that sub-section (2) of section 107 of the Government of India Act ..... and sub-section (2) of section 126 of that Act..... shall apply in relation to a law enacted in virtue of this section with respect to any matter, being a matter with respect to which a province has power to make laws,

if that matter were the matter specified in PartII of the Concurrent Legislative List, section 100 of the Government of India Act empowered both the Provincial legislature and the federal Legislature to make laws with respect to any of the matters enumerated in the Concurrent List. The Bombay Essential Commodities and Cattle (Control) Act was published on the 30th September 1946 and has come into force on the 1st October 1946. On the 25th September 1946 the Governor General issued an Ordinance called the Essential Supplies (Temporary Powers) Ordinance, 1946, which inter alia declared "foodstuffs" as essential commodity under that Act. This Ordinance was also to come into force on the 1st October 1946. Even if it is argued that the Essential Supplies (Temporary Powers) Ordinance 1946, is an earlier Federal Law having been promulgated on the 25th September 1946, the Bombay Act having received the assent of the Governor General on the 30th September 1946 would prevail in the Province of Bombay. The Bombay Act, even though, it declared 'milk' as essential commodity for the purposes of that Act, is not void under sub-section (1) of section 107 of the Government of India Act. The Essential Supplies (Temporary Powers) Act, 1946, continues the provisions of the Ordinance which otherwise would have expired after a period of six months from the date of its promulgation. Sub-section (2) of section 107 of the Government of India Act provided that "nevertheless the Federal Legislature may at any time enact further legislation in respect of the same matter." The provisions of the said section 107 were however considered in any of the judgements quoted above and R.L.A. has held in his opinion No. G-384 dated the 8th November 1950 that with respect to orders in respect of milk and milk products both the Bombay and Central Acts may be referred to in the preamble of any such order.

In fact the Bombay Milk and Milk Products (Control of Preparations) Order, 1951 and the Bombay Milk (Regulation and Use and Sale) Order, 1951 have been made with reference to provisions of both the Bombay and the Central Acts.

The Civil Supplies Department may therefore bring to the notice of the Government of India that so far as milk is concerned it is essential that the powers should continue to be exercised by the Bombay Government both under the Bombay Act and the Central Act. And as the Order regarding milk and milk products are generally contained in the same notification it is desirable that the power regarding milk product should remain with the State Government.

Question No.2:- The Entertainment Restriction Order prohibits the serving of any eatables at any function and the two Courses Meals Order regulated the serving of cooked food in a hotel or a restaurant. The orders were made in virtue of the delegated authority as given to the State Government by the Central Government. The proposal now is to withdraw the power of the state Government to make orders in respect of articles other than foodgrains. The effect of the withdrawal of such delegation would be that from the date on which the delegation is withdrawn the State Government would not be competent to make any order in respect of foodstuffs other than foodgrains. But that would not render the orders already made by the State Government invalid. It is for the Central Government, after that date, to decide whether the orders should continue to remain or should be amended or should be cancelled. It is likely that the Central Government may consult the Bombay Government before any action in regard to such orders is taken by them.

Sd./-

Additional Secretary to Government.

U.R. to C.S.D., No.G-176, dated the 8th May 1951.

S.I./14.7.56. 4c.

From the Civil Supplies Department note at p. 204 under which the present reference has been made to the R.L.A. it appears that the Civil Supply Department has not considered the provisions of proviso (b) to clause 3(1) of the Bombay Foodgrains (Control of Movement) Order, 1949. It is true that according to clause 3(1) of the Order, for import of foodgrains a permit is necessary. But proviso (b) to that clause clearly provides that nothing in that clause shall apply to the export or import of foodgrains under and in accordance with an order of the Government of India. The gift parcels in question are allowed to be imported into Indian Union presumably under the general orders issued by the Government of India and as such provisions of clause 3(1) of the Order would not apply to the import of such parcels. In view of the said proviso to clause 3(1) of the Order, the point raised by the Civil Supply Department at page 204 ante does not survive.

It is true that in Civil Supplies Department order No. 383/1 dated 7-7-1948 which is referred to by the Deputy Director of Civil Supplies (Districts) in his letter to the Collector of Customs at page 173 ante, there is no provision similar to proviso (b) to clause 3(1) of the Bombay Foodgrains (Control of Movement Order, 1949. But both the orders being issued under the delegated powers under the same Act, they will have to be reconciled, more so when the order exempting such imports under an order of the Government of India is of a later date It would not therefore be expedient to insist on an import permit under the former order in this case. The former order requires to be suitably amended to conform with the latter order.

Id/-

Additional Secretary to Government.

U.R. to C.S.D. No.G-122, dated the 3rd March 1951.

S.I./14.7.56/ 4c.

Legal Department.

The Additional Secretary does not see any reason to revise his precious opinion. The order issued by the Government of India permitting importation of foodgrain parcels is a general order and the importation of such parcels would be importsion under and in accordance with the order of the Government of India under the proviso (b) to clause 3(1) of the Bombay Foodgrains (Control of Movement) Order, 1949. In view taken by the Civil Supplies Department is not correct.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No.G-223, dated the 7th June 1951.

S.L./14.7.56. 4c.

Office of the R.L.A.

Please see u.c.r. from S.T.C. No.518/95511/VII, dt. 17-4-51 on pre-page.

The facts of the case are fully set forth in the Deputy Commissioner of Police, Crime Branch II's office note, dt. 26-3-51 ante and Deputy State Textile Controller's note, dt. 30-3-51, on pre-page.

The Sakseria mills Ltd., conducted a retail cloth shop under a S.R.D. licence No.2563, dt. 11-10-49 granted by the State Textile Controller. Shri Karsands J.Gadodia is the manager of the Mills Retail Cloth Shop. Shri G.K.Bakaliwal is the Manager of the Mills, and Shri G.N.K.Iyer was the General Manager working in the Head Office of the Mills and was dismissed from service on 9-3-51. The said retail licence expired on 31-7-50. However, the mills continued to conduct the shop till 2-2-51 without getting the licence to the State Textile Controller for renewal on 10.2.51 and investigations were ~~mx~~ thereupon launched and it was disclosed that the mills had carried on retail business from 1-8-50 to 2-2-51 without a license. The cash memos were seized under a panchnama. During this period 14 bales of cloth delivered from the Mills were disposed of in retail at the shop. Shri Gadodia, the Manager of the shop in his statement before the police states that he was not aware of the fact that the licensee had expired till about the last week of January, 51 when by chance he looked at the same. He then informed the Mill Manager and as suggested by him the license was sent

to.....

to the Head Office of the Mills by the last week of January 1951. The General Manager under his letter, dt. 5.2.51 called for the Explanation of the Mills Manager for not sending the license for renewal before expiry and asked him to xx take strong action against the persons responsible for it. Thereafter, as stated above, the General Manager, Shri Iyer under his letter, dt. 10.2.51 sent the licensee to the State Textile Controller for renewal.

In the above circumstances the State Textile Controller has refered the case for R.L.A's advice as to whether all the Directors, the Ex-General Manager, the Mill Manager and the Shop Manager should all xx be prosecuted and whether the Ex-General Manager who recently gave valuable information about certain offences committed by the Mills should be exempted from prosecution.

S.I./14.7.56. 4c.

Office of the R.L.A.

Attention of the Civil Supplies Department is invited to R.L.A's opinion dated 25-4-51 in the case of the same Mills in regard to maize starch and loomd. In this case also if four of the ~~xxx~~ seven Directors have resigned, it would be wrong to launch prosecution against all the seven. It is, therefore, advisable to launch prosecution only against the three Directors who have not resigned, the Ex-General Manager, The Mill Manager and the Mill Retail Shop Manager.

Sd/-/14.6

Remembrancer of Legal Affairs.

U.R. to Civil Supplies Department No.G/233 dt.15, June 1951.

S.I./14-7-55. 4c.

The question for consideration is whether in view of the amendment to section 3(3) of the Essential Supplies (Temporary Powers) Act it is not necessary for Government to issue afresh all the notifications so far issued by the Civil Supplies Department by which powers to issue certain orders or to take certain steps were conferred of the District Magistrates.

Section 3(3) of the Essential Supplies (Temporary Powers) Act stood as follows before it was amended by India Act LII of 1950:-

"(3) An order made under sub-section (1) may confer powers and impose duties upon the Central Government or officers and authorities of the Central Government, notwithstanding that it relates to a matter in respect of which the Provincial Legislature also has poer to make laws."

After amendment it reads as follows:-

"(3) An order made under sub-section (1) may confer powers and impose duties upon the Central Government or the State Government or officers and authorities of the Central or state Government and may contain directions to any State Government or to officers and authorities thereof as to the exercise of any such powers or the discharge of any such duties."

It is true that the amendment of the section has now put beyond all doubt that an order made under section 3(1) may confer powers and impose duties on the officers of the State Government and may contain directions to such officers as to the exercise of any such powers or to discharge of any such duties. But it does not seem necessary to reissue all the Civil Supplies Department orders under which certain powers are conferred or duties imposed on District Magistrate as the subordinate officers of Government for administrative convenience. In most of the Orders the District Magistrates are

empowered to issue permits or licences. But in cases where certain statutory duties are entrusted to executive Officers i.e. in Orders such as the Bombay Essential Commodities (Regulation of Disposal and Acquisition) Order, the District Magistrates are entrusted with the power to call for declaration and to freeze or requisition the stock. In consequence of the view taken by some Courts that such entrustment of power amounts to redelegation, it appears desirable to reissue these orders with the concurrence of the Central Government so that the defect if any may be cured. (cf. Fakir Mahomed Vs. King, I.L.R. (1949) Cut.627).

Id/-22.8.

Remembrancer of Legal Affairs.

O.R. to C.S.D. No. G-382, dated the 23rd August, 1951.

S.I./14.7.56. 4c.

Submitted.

The facts in brief are as follows:-

In October, November 1949 Shri S.B.Yarmal, a merchant of Bijapur purchased 455 bags of jowar and 580 bags of bajri at the rate of about Rs.42/8/- and Rs.45/- per bag respectively and contracted to sell the same to M/s. Mohanlal Khanji & Co. of Kalyan for Rs.43/- and Rs.44/- per bag of jowar and bajri respectively, F.O.R. Bijapur Station. In accordance with this agreement, Shri Yarmal Transported the bags of Jowar and bajri to Bijapur Railway Station in the first week of December 1948 but could not (except for 50 bags) transport them to the purchaser on account of non-availability of wagons. On 16/12/48 the Bombay Foodgrains (Movement Prohibition) Order, 1948 was issued banning Inter District movement of food-grains without a permit. Shri Yarmal approached the District Magistrate for an export permit which was refused. Owing to the ban the Station Master, Bijapur could not accept the offer of transport and served him a notice dated 21-12-48 asking him to remove the said bags of jowar and bajri lying in the Station Yard. Shri Yarmal was, therefore, compelled to remove the bags and did so by 25-12-48. The merchants holding wholesale or retail licences were allowed to sell their stocks by 15th January 1949 after which date they were not allowed to make any fresh purcheses and the stocks remaining with them were liable to be requisitioned by Government at Government purchase rates. Shri Yarmal was able to dispose of about 250 bags of jowar in Bijapur at the rate of about Rs.30/- to Rs.33/- per bag, thus

realising Rs.8,000/-. The Collector and District Magistrate, Bijapur Directed Shri Yarmal to sell the remaining grains at the rate of Rs.11/- and Rs.10/- per Bengal Maund to the Government godowns at Bijapur and he accordingly sold 574 bags of bajri and 194 bags of jowar to the godown Manager at the above said rates under protest. Shri Yarmal realised Rs.14960/- by sale of bajri bags to Government and Rs.4850/- by sale of 194 bags of jowar. Shri Yarmal has, therefore, served notice to Government claiming the purchase price of the bags of jowar and bajri minus the amounts realised by him i.e. Rs.17150/- with future interest. His contention is that as the goods were in transit Government should have ~~gax~~ granted him a permit for transport as was granted to other merchants whose goods were in transit from one place to another.

Civil Supplies Department is of the opinion that since the bags belonging to Shri Yarmal had not left the Bijapur Railway Station they could not be said to be in transit and therefore the decision of Government as conveyed to him should stand. Further, Government has the discretion to grant or refuse a permit for export and Shri Yarmal's claim for damages to the extent of Rs.17150/- cannot stand.

R.L.A. has been requested to advise.

S.I./14.7.55. 4c.

Legal Department.

The Bombay Foodgrains (Movement Prohibition) order 1948 issued under section 3 of the Essential Supplies (Temporary Powers) Act, 1946 is applicable to this case and Government can use its own discretion in either granting or refusing a permit for transport. Similarly as Shri Yarnal was not able to dispose of the Foofgrains by ~~15~~ 15th January 1949 he is not entitled to any damages (see section 16(2) of Essential Supplies (Temporary Powers) Act, 1946). Suit, if filed, would therefore be defensible.

Id/-

Additional Secretary to Government.

U.R. to C.S.D., No. G.527, dated the 26th October 1951.

S.I./14.7.56. 4c.